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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/340,391	06/28/1999	STEVEN M BESSETTE	45112-023	3849

23117 7590 06/11/2004

NIXON & VANDERHYE, PC  
1100 N GLEBE ROAD  
8TH FLOOR  
ARLINGTON, VA 22201-4714

EXAMINER
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LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 06/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

### Application No.

09/340,391

### Applicant(s)

BESSETTE, STEVEN M

### Examiner

Neil Levy

### Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 6, 18, 19 and 24-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 6, 18, 19 and 24-26 is/are rejected.
- 7) ☒ Claim(s) 27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

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The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 25, 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

25 have no antecedent for essential oil.

26 have overlapping animals.

Claims 6, 26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The rejection of record is maintained.

Claim 26 now is to invertebrates – Thus, jellyfish, spiders, while the arachnids, insects are within the generic invertebrates, and again cockroach is shown controlled. ~~The amount of testing is inordinately~~. The amount of testing is inordinately high, to determine which invertebrate, by which method, control should be attempted. This is beyond routine screening, and beyond the scope of the specification.

Claims 1, 6, 18, 25, 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lover et al 4368207 in view of Herrera et al 4195080.

Lover (of record) shows benzyl alcohol and phenylethyl alcohol to be effective insecticides, but at high concentrations, and no instant enzyme inhibitors are used. Herrera (of record) show similar insecticides, those of the instant invention similar to

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essential oil components, without pyrethrum (Example B.) but with the instant enzyme inhibitor at effective amount to be insecticidal, applied to the insert (claims 1-3).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize natural compounds to control insects, to use one of Lover, modified by addition of PBO as shown advantageous by Herrera.

Applicant has not provided any objective evidence of criticality, non-obvious or unexpected results that the combination of the particular ingredients' or concentrations provides any greater or different level of prior art expectation as claimed. The amounts, forms and proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the form of each ingredient to optimize the effect desired, depending upon the particular species and application method of interest, reduction of toxicity, enhanced, and prolonged, or synergistic effects, and the use of ingredients for the functionality for which they are known to be used is not basis for patentability.

Claims 19, 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lover et al 4368207 in view of Herrera and Casida et al.

As above, Lover provides the instant alcohol essential oil components, but not the instant synergists, while.

Herrera shows only PBO. Casida of record shows the synergist to be equivalents of each other (pp.197).

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It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize natural compounds to control insects, to use one of Lover, modified by addition of PBO as shown advantageous by Herrera or Casida.

Applicant's arguments filed on            have been fully considered by they are not persuasive. Applicant's arguments are not persuasive, in view of new rejections.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce Hess whose telephone number is 571-272-1525. The examiner can normally be reached on Monday thru Friday from 6:30 to 7:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia Kelly can be reached on 571-272-1526. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Levy/LR  
June 3, 2004



NEIL S. LEVY  
PRIMARY EXAMINER